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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,643	08/22/2003	George William Dailey	2003P07970 US	9785

7590 10/27/2005

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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/646,643		DAILEY, GEORGE WILLIAM	
	Examiner		Art Unit	
	Timothy M. Ayres		3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 24-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a final office action on the merits of application SN10/646,643.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the motor assembly **operably coupled** to each of the connecting arms in claim 4, the planar member **configured and adapted** to support the patient in claim 1, and how the pedestal is further **configured** for independent rotational motion in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

Art Unit: 3637

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the motor assembly can be **coupled** to each of the connecting arms.

4. Claim 5 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the pedestal is **configured** for independent rotational motion.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3637

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent 3,288,090 to King. King '090 discloses an elongated planar member (10) that has a top and bottom side and inherently can support a patient. A support assembly (12) includes a base (18) that defines the base plane and a pedestal (36) disposed on the base (18). A plurality of elongated connecting arms (14), with a first end defined by pins (42) and a second end defined by pins (38). The first end of the elongated members (14) is pivotally attached through pins (42) to the bottom of the planar member (10) through flange (40). The second end of the elongated members (14) is pivotally attached through pins (38) to the base pedestal (36). The planar member (10) moves from a first position to a second position as shown in figure 1 with the elongated members (14) traveling through an axis that is orthogonal to the base.

7. The means for moving the planar member from the first position to the second position is a motor assembly (66, 68) with a screw member (54), which connects to the pins (38,42) and the connecting arms. The plane of the first position and the plane of the second position are parallel to each other and the base plane as shown in figure 1. The plurality of elongated members (14) is arranged in a four bar linkage.

9. Claims 5, 6, 9-13, 15-20, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,288,090 to King in view of U.S. Patent 4,173,372 to Norris. King '090 discloses every element as stated above. King '090 does not disclose expressly the pedestal configured for independent rotational motion relative to the base about a vertical axis and a motor assembly to rotate the pedestal. Norris '372 discloses

Art Unit: 3637

a support assembly (12) for a seat (14) that is rotatable on the pedestal (10) about the vertical axis. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the assembly of King to rotate like support assembly of Norris so that the assembly can be rotated to any desired orientation.

10. In regards to claim 6, King '090 in view of Norris '372 discloses the claimed invention except for a motor assembly to rotate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a motor assembly to rotate the assembly, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that has accomplished the same result involves only routine skill in the art. In re Venner 120 USPQ 192.

11. Claims 9-13, 15-20, 22, and 23 are an obvious method of using the device of King modified by Norris.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,288,090 to King in view of U.S. Patent 6,516,478 to Cook. King '090 discloses every element as described above. King '090 does not disclose expressly a remote control coupled to the motor assembly. Cook '478 discloses an adjustable height platform (10) with a motor (30) attached to scissor linkage (36,38,40,42). The motor (30) is attached through a controller (20) to a remote control (96) as shown in the block diagram of figure 5. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the assembly of King and add the remote control of Cook to activate the motor remotely.

13. Claim 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,288,090 to King in view of U.S. Patent 4,173,372 to Norris as applied to claim 24 above, and further in view of U.S. Patent 6,516,478 to Cook. King modified by Norris discloses every element above except a remote control. Cook '478 discloses every element described above as applied to claim 7. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the assembly of King in view of Norris and add the remote control of Cook to activate the motor remotely.

14. Claims 14 and 21 are an obvious method of using the device of King modified by Norris and further modified by Cook.

Response to Arguments

15. Applicant's arguments filed 6 October 2005 have been fully considered but they are not persuasive. The fact that the drawings show the elements of the planar member and the specification recites that the planar member supports and positions the patient does not show or describe how it is configured and adapted to support the patient. A patient should be shown in the drawings. The 112.1 rejection to claim 1 has been withdrawn since the claim language is adapted to and that is interpreted to mean capable of supporting a patient.

16. The fact that the drawing has the motor assembly and connecting arms still does not show how they are operably connected. The connection method should be

Art Unit: 3637

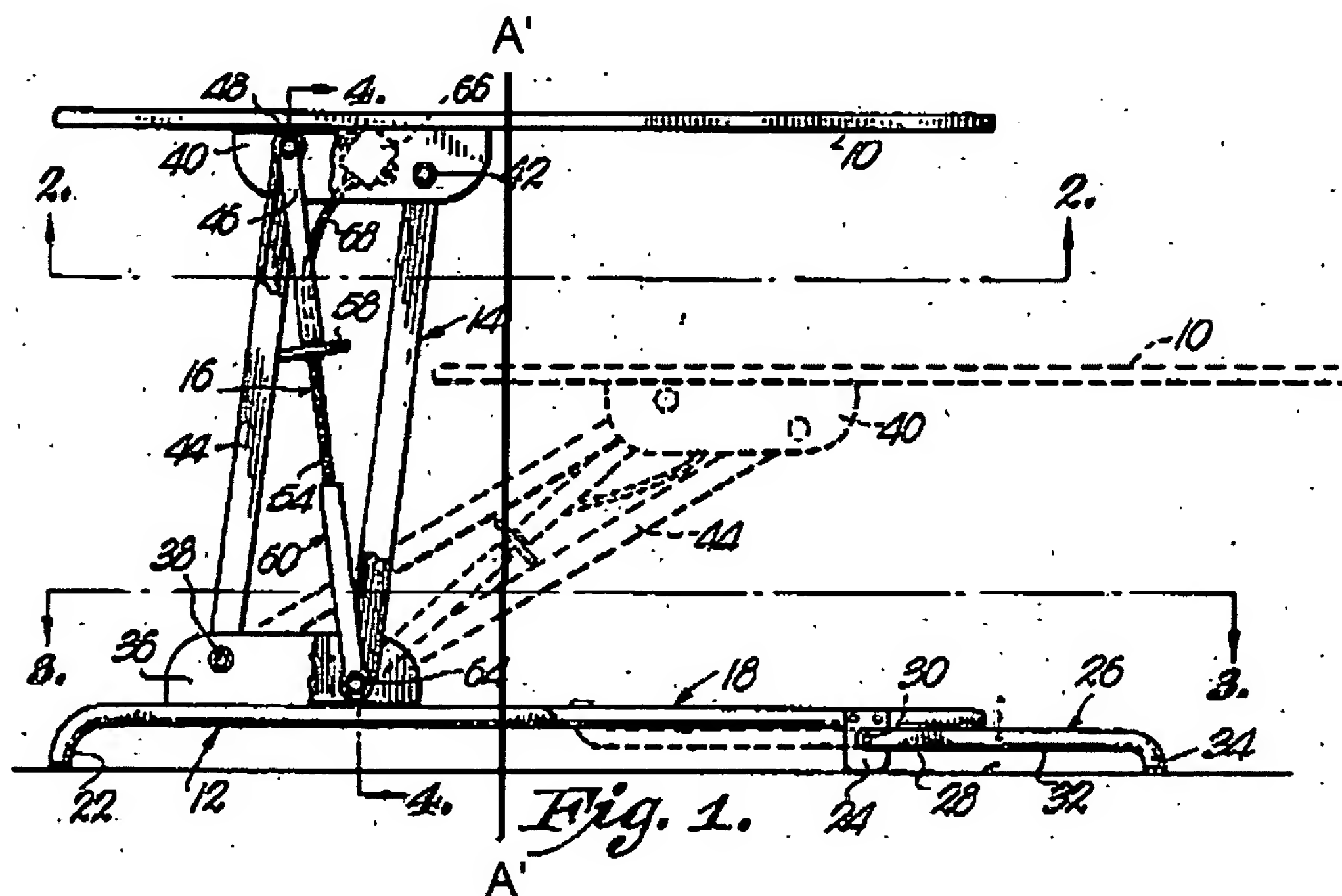
described in the specification and shown in the drawing in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to **make and use** the invention.

17. Though it is described in the specification as to how the pedestal is configured for independent rotational motion it does not describe to a level to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to **make and use** the invention. If it is known in the art, then a reference should have been given when the application was filled. Again the drawing should show how the pedestal is configured for rotation movement. It is also unclear how one motor assembly (122) can be operably connected to the connecting arms and yet still allow for independent rotational motion of the pedestal.

18. In response to applicant's argument that U.S. Patent 3,288,090 to King is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, King '090 solves the problem of moving a planar object in multiple vertical positions. King '090 is capable of supporting a patient, since the definition of a patient is anyone who needs medical attention, a baby can be included as anyone who needs medical attention and even some babies can weigh less than an iron does.

Art Unit: 3637

19. Regarding the argument that the parallel linkage of King '090 does not travel through an axis that is orthogonal to the base. It is impossible for a connecting arm that has a solid pivot and some width to travel completely through any axis as implied by the applicant's interpretation of claim 1. It is interpreted by the examiner that each connecting arm just has to travel across one axis orthogonal to the base as shown in the marked up figure 1 below with axis A'-A' and not that an axis of the connecting arm has to be orthogonal at some point in the travel of the connecting arm or that the angle of attack has to be 90 degrees as used in the applicants argument on page 10 of the remarks filed received on 10/06/05 even though it does not appear in the claims.



King '090 Figure 1

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-FRI 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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10/17/05



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